IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL REVISION APPLICATION NO. 18 OF 2004

Smt. Madhavi Jadhav,
wife of late Shri Maruti Jadhav,
aged 62 years, housewife,
resident of Baina,
Vasco - Goa. ... Applicant

versus

State
(through Public Prosecutor) ... Respondent

Mr. Shivan Dessai, Advocate for the Applicant.

Mr. S. N. Sardessai, Public Prosecutor for the State/Respondent.

CORAM : V. M. KANADE, J.

DATE : 7TH JULY, 2005.

ORAL JUDGMENT

The Applicant is the Original Accused. She is challenging the Judgment and Order passed by the Assistant Sessions Judge, South Goa, Margao, who convicted her for having committed an offence punishable under Section 4 of the Immoral Traffic(Prevention) Act, 1956(Act, for short). The Accused preferred an Appeal in the Court of Sessions Judge, South Goa, Margao, who was pleased to confirm the Order passed by the Assistant Sessions

Judge. The Applicant is challenging both these Orders which are passed by the lower appellate Court as well as the trial Court.

2. The brief facts are that on 16-6-2001, the SDPO, Vasco, Shri Vishram Borkar, A.S.I. Kerkar, LPC Annie Ghaltag and two Police Constables raided her house in the red light area at Baina when they received information that one minor girl had been confined in the room by the Accused and was forced into prostitution. P.S.I. Serafino Dias of the Vasco Police Station was also in the raiding party and they broke open the room and found one girl who was 14 to 15 years of age. She was brought to the Police Station and further investigation was carried out by the Police Inspector Serafino Dias. He lodged a complaint and his F.I.R. was recorded on the same day. During the course of the investigation, the statement of the victim and the other witnesses was recorded and the minor girl Ulgawwa Chalwadi was sent for medical examination and thereafter she was sent to a Protective Home at Merces. During the course of investigation, a sketch of the scene of offence was drawn and investigation was arranged in the Municipal Council to ascertain the name of the owner of the room. After the relevant information was obtained the Accused was arrested on 30-11-2001. A charge-sheet was accordingly filed against the Accused and the Judicial Magistrate, First Class, Vasco committed the case to the Sessions Court. The Assistant Sessions Judge framed a charge against the Accused who pleaded not guilty

and accordingly thereafter the prosecution examined its witnesses. The prosecution in all examined 9 witnesses. The trial Court acquitted the Accused of the offence punishable under Section 366-A of the Indian Penal Code and Sections 5 and 6 of the said Act. The trial Court, however, came to the conclusion that the prosecution has proved its case beyond reasonable doubt so far as charge under Section 4 of the Act is concerned and accordingly convicted her for having committed an offence under Section 4 of the said Act and she was sentenced to suffer simple imprisonment for 3 months. The Accused was also sentenced to pay a fine of Rs.1000/- and in default to undergo 1 month imprisonment. The trial Court directed that if the fine was realized, the entire amount of Rs.1000/- should be paid to the prosecutrix.

3. Against the said Judgment and Order, the Applicant/Original Accused preferred an Appeal before the Sessions Judge who was pleased to confirm the Order passed by the Assistant Sessions Judge and dismissed the Appeal filed by the Applicant.

4. I have heard Mr. Shivam Dessai, learned Counsel appearing on behalf of the Applicant and Mr. S. N. Sardessai, learned Public Prosecutor appearing on behalf of the State at length. The learned Counsel appearing on behalf of the Applicant has submitted that the entire investigation which was carried out by the

prosecution had been vitiated as the provisions prescribed under the said Act have not been complied with and that serious prejudice had been caused to the Accused. He submitted that firstly, the investigation was carried out by P.W.8, Serafino Dias, who was not a Special Officer appointed by the Government to investigate into the matter as required under Section 13 of the Act. He further submitted that the investigation has been carried out by P.W.8, Serafino Dias, who was also the Complainant. He submitted that there was no bar under the Act or under the Code of Criminal Procedure which prevented the investigation to be done by the person who had recorded his F.I.R. at whose behest the complaint was lodged, yet serious prejudice was caused to the Accused and that the investigation was most likely to have been carried out in a biased manner and on account of the possibility of such a bias in the investigation which was carried out the entire investigation had been vitiated on account of bias. He further submitted that Section 13 specially laid down that a Special Officer had been appointed by the Government by issuing a Notification and that such a Special Officer could not be below the rank of a Police Inspector. He submitted that Sub-Clause 3 of Section 13 laid down that such a Special Officer could be assisted by an Assistant who also had to be appointed by the Government by issuing Notification. He submitted that in the present case, the Notification which was issued by the Government disclosed that P.W.1, Vishram Borkar, who was the SDPO was appointed as a Special Officer and P.W.8, Serafino Dias was a Police Inspector and was appointed as an Assistant under the Notification dated 12-3-1996 and had in fact carried out the investigation. He, therefore, submitted that the provisions of Section 13 had not been complied with as P.W.1, Vishram Borkar, as Special Officer was

appointed under the Act and admitted in his cross-examination that he had not conducted the investigation though he was a member of the raiding party on the day on which the raid was conducted. In support of the said submission, the learned Counsel relied on a Judgment of the Supreme Court reported in **State** v. **V. Jayapaul** (2004 SCC (Cri) 1607).

5. The learned Counsel thereafter submitted that in view of Section 15 of the Act a search could be carried out without warrant. It was necessary that a panchanama should be prepared by two independent local persons. He submitted that in the present case admittedly no panchanama was prepared after the raid was conducted. He submitted that though it had been held by the Supreme Court that the provision was not mandatory yet he submitted that it was a material irregularity as a result of which prejudice has been caused. He thereafter submitted that the investigation had been carried out by the persons who were not authorised to carry out the said investigation. He invited my attention to Section 13 which lays down to appointment of a Special Officer. He also invited my attention to Section 2(ii) which defines a Special Officer and also invited my attention to a Notification dated 12-3-1996 wherein the Sub Divisional Police Officer, P.W.1, Vishram Borkar has been appointed as a Special Officer and under Section 13(3)(a) a Subordinate Officer was also to be appointed to assist the Special Officer. He submitted that the Complainant, P.W.8, Serafino Dias was appointed as a Subordinate Officer and he had carried out the investigation. He submitted that there was no evidence on record to indicate that P.W.1, Vishram Borkar who was appointed as a Special Officer had authorised the Complainant P.W.8, Serafino Dias to carry out the

investigation. He submitted that, therefore, there was a breach of provisions of Section 13. He relied on a Judgment of the Supreme Court reported in **Delhi Administration** v. **Ram Singh** (AIR 1962 SC 63). He also relied on a Judgment of the Delhi High Court reported in **Mumtaz alias Behri** v. **The State** (2003 CRI. L .J. 533). He submitted that the said Act was a self contained Code and a special procedure was contemplated under the said provisions. He submitted that non compliance of the provisions of Sections 13 and 14, therefore, had clearly vitiated the entire inquiry and serious prejudice was caused to the Accused as a result of non compliance of the said provisions. He relied on a Judgment of the Supreme Court in the case of **Megha Singh** v. **State of Haryana** (1995 CRI. L. J. 3988) in support of his submission that the investigation even otherwise ordinarily was not to be carried out by the Complainant as it created a doubt to suspect fair and impartial investigation.

6. He submitted that the trial Court and the lower appellate Court had not taken into consideration the ratio of the Judgments on which reliance was placed by the Accused. He submitted that, therefore, on this count the Order passed by both the lower Courts and the finding which was recorded was liable to be quashed and set aside. He submitted that both the Courts had committed a material irregularity which had caused serious prejudice to the Accused. Therefore, both the Orders were liable to be set aside.

7. The learned Counsel, therefore, submitted that the provisions of Sections 4, 5 and 6 of the Indian Penal Code were interrelated offences and that since the Accused was acquitted for the offences punishable under

Sections 5 and 6 of the said Act, the trial Court had erred in coming to the conclusion that the Accused had committed an offence punishable under Section 4. It is submitted that since both the lower Courts had disbelieved the evidence of the witnesses in respect of charge framed under Sections 5 and 6 of the said Act as a necessary corollary the Accused was liable to be acquitted for the charge framed under Section 4. It is submitted that the trial Court had erred in believing the prosecution witnesses in respect of their testimony in support of a charge under Section 4 of the said Act though it had disbelieved the testimony of the same witnesses in respect of a charge under Sections 5 and 6 of the said Act. He invited my attention to a finding given by the lower appellate Court in para 7 of the Judgment and a finding of the trial Court in para 17 of the Order in support of his claim.

8. The learned Counsel further invited my attention to the evidence of P.W.5, Ulgawwa Ghaltag, who was the prosecutrix examined by the prosecution and submitted that the said witness had made number of contradictions and improvements in her statement which was recorded by the Police and, therefore, her evidence could not be relied upon. He further submitted that her evidence was also improbable inasmuch as though she had ample of opportunity to make a complaint against the Accused she had declined to make a complaint against the Accused to any person till the raid was conducted by P.W.1, Vishram Borkar. He further submitted that so far as P.W.3, Minaxi Talwar is concerned, her evidence was also not reliable and that no particulars were given by P.W.3, Talwar as to when and on which date she had seen the Accused accepting money from the customers who had visited the

room of the prosecutrix. He submitted that the evidence of P.W.3, Talwar was very sketchy. He further submitted that P.W.5, Ulgawwa Chalwadi also in her evidence had not referred to P.W.3, Talwar. He submitted that, therefore, there was no corroboration in the testimony of P.W.5, Chalwadi. He further submitted that the Accused was arrested on 30-6-2001 though the raid was conducted on 16-6-2001. He submitted that this clearly indicated that the name of the Accused was implicated an an afterthought though from the evidence on record it could be seen that the prosecutrix had named the Accused on the same day. It clearly showed that the Accused had been implicated by P.W.3, Talwar. He further submitted that though it had come on record that the sister of the prosecutrix was staying in the same village her statement had not been recorded by the Police Officer. He, therefore, submitted that the Judgment and Order passed by both the lower Courts were, therefore, liable to be set aside.

9. The learned Public Prosecutor appearing on behalf of the State submitted that it was a settled position in law that the scope of the High Court by exercising its revisional jurisdiction was very limited. He submitted that unless there were bearing infirmities in the Order passed by the lower Courts ordinarily the High Court should not interfere with the Order passed by the lower Courts. In support of the said submission he relied on a Judgment of the Supreme Court in the case of **Harnek Singh** v. **State of Punjab** reported in (1999 CRI. L. J. 452). He further submitted that so far as the objection raised by the Applicant in revision applications are concerned both the lower Courts had dealt with the said question and had given a finding against the Accused. He

submitted, therefore, that there was no reason to interfere with the concurrent finding given by both the lower Courts. He further submitted that the Investigating Officer was a Police Inspector and he had accompanied the Special Officer P.W.1, Vishram Borkar who had conducted the raid after they had received reliable information that a minor girl was detained by the Accused in a room and was forced into prostitution. He submitted that P.W.1, Borkar was appointed as a Special Officer as contemplated under the provisions of Section 2(i) and Section 13 of the said Act. He submitted that since reliable information was received during the course of investigation of another offence which was being conducted by the Special Officer and the Inspector of Police, P.W.8, Serafino Dias, the raid had to be immediately conducted and there was no time to record a panchanama. He submitted that time would have been wasted in securing a panch witness. He submitted that the provisions of the said Act have been incorporated to ensure that the investigation is carried out in a particular manner considering the sensitive nature of the crime. He submitted that as long as evidence is not adduced to show that prejudice is caused to the Accused merely because there is some irregularity in conducting the investigation that by itself would not vitiate the entire investigation. He submitted that merely because the Complainant himself had investigated the offence also by itself would not vitiate the investigation. In support of the said submission he relied on a Judgment of the Supreme Court in the case of **State** v. **Jayapaul** (2004 SCC(Cri) 1607). He submitted that, therefore, the Criminal Revision Application was liable to be dismissed.

10. In the present case, it is an admitted position that P.W.1, Borkar,

who had conducted the raid was at the relevant time working as SDPO, Vasco and was appointed as a Special Officer as per the Notification dated 12th March, 1996. P.W.1, Borkar, therefore, was specifically assigned the work of Special Officer as defined under Section 2(i) r/w Section 13(3)(a) of the said Act. It would be relevant to take into consideration the provisions of Section 2 (i) and Section 13 of the said Act. Section 2(i) reads as under:-

> "(i) "special police officer" means a police officer appointed by or on behalf of the State Government to be in charge of police duties within a specified area for the purpose of this Act".

11. Similarly, Section 13 reads as under:-

> Section 13, therefore, contemplates that a Special Officer should be appointed by the State Government for dealing with the offences under this Act in a particular area.
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> Sub-Clause (3) of Section 13 lays down that the special police officer shall be assisted by such number of subordinate police officers as the State Government may think fit".

12. P.W.8, Serafino Dias, who was the Inspector of Police at the relevant time was appointed as an Officer to assist the Special Officer pursuant to the Notification dated 12th March, 1996. In the present case, the raid was conducted by P.W.1, Borkar, who was a Special Officer. At the relevant time when the raid was conducted, P.W.8, Serafino Dias also had accompanied him along with other Officers. The said raid was conducted since information was

received by the Special Officer at about 21.30 hours that the prosecutrix was forced into prostitution by the Accused and was detained in her house. P.W.1, Borkar, has stated that he along with his other Officers was investigating an offence which was registered as Crime No. 119/01 and for that purpose had proceeded to Baina at about 21.30 hours and thereafter during the course of the said investigation they received information at 21.30 hours that one minor girl was forced into prostitution and on the basis of the said information immediately a raid was conducted. Thus, the investigation was initiated by a Special Officer to conduct a raid along with P.W.8, Serafino Dias who was his Assistant, who later on after the girl was rescued from the house of the Accused lodged a complaint against the Accused and thereafter a further investigation was carried out by her. Thus, therefore, it cannot be said that the investigation had not been carried out as per the provisions of Section 13 r/w Section 2(i) of the said Act. It is no doubt true that the Special Officer, P.W.1, Borkar in his cross-examination had in answer to a question which was asked to him regarding the panchanama of the raid, he had answered that he was not the Investigating Officer in the case to answer why the panchanama was not conducted in respect of the raid. Merely because P.W.1, Borkar has stated that he was not the Investigating Officer it does not mean that the entire investigation was carried out by a person who was not authorised to investigate as required under Section 13. The initial raid was conducted by a Special Officer at which time P.W.8, Serafino Dias who was an Assistant Officer specifically appointed under the provisions of Section 13(3) was present and thereafter the girl was brought to the Police Station and the statements of the witnesses were recorded by the Assistant Special Officer. Thus, the

subsequent investigation though it may have been carried out by a person appointed under Section 3 would not amount to the investigation being carried out by a person not authorised under the Act. The submission made by the learned Counsel appearing on behalf of the Applicant cannot be accepted. The learned Counsel appearing on behalf of the Applicant relied on a Judgment of the Supreme Court in the case of **Delhi Administration** v. **Ram Singh** (AIR 1962 SC 63). In the said case one Jet Ram was a Sub-Inspector, who had not been appointed as a Special Officer by the State Government, investigated the case against the Accused under the said Act and filed a charge-sheet to the Magistrate. The Magistrate quashed the charge-sheet holding that the Special Police Officer alone was competent to investigate the case and that Jet Ram could not have investigated it. The High Court in its revision agreed with the view of the Magistrate and dismissed the revision against which an appeal was preferred in the Supreme Court. The Supreme Court after having taken into consideration the provisions of the Act over the particulars under Section 13 came to the conclusion that the special police officer was competent to investigate and that he and his assistant police officers are the only persons competent to investigate offences under the Act. Para 24 of the Judgment reads as under:-

> "(24). We are therefore of opinion that the special police officer is competent to investigate and that he and his assistant police officers are the only persons competent to investigate offences under the Act and that police officers not specially appointed as special police officers cannot investigate the offences under the Act even though they are cognizable

> offences. The result is that this appeal by the Delhi Administration fails and is hereby dismissed".

13. In the present case, the raid has been conducted by a Special Officer who has been appointed under the Act and later on the investigation has been carried out by his Assistant Police Officer, P.W.8, Serafino Dias, who has also been appointed under Section 13, Sub-Cluase 3 by the State Government. Thus, therefore, the ratio of the said Judgment will be squarely applicable to the facts of the present case. In the said case before the Supreme Court the investigation was carried out by one Jet Ram who was a Special Inspector and who had been appointed as a Police Officer by the State Government and in that context the Supreme Court had upheld the Judgment of the High Court and had quashed the charge-sheet which was filed against the Accused. However, as stated above, that is not the case in the facts of the present case. The learned Counsel appearing on behalf of the Applicant also relied on a Judgment in the case of **Mumtaj alias Behri** v. **The State(Govt. of NCT Delhi**)(2003 CRI. L. J. 533). In the said case, it was also observed in para 6 of the said Judgment that the entire proceedings were conducted by S.I.V.P. Jha who was not appointed as Special Police Officer and on the basis of the Judgment of the Supreme Court in the case of **Delhi Administration** v. **Ram Singh**(supra) the entire proceedings namely search, investigations, arrest and prosecution by S.I.V.P. Jha was held to be illegal. In my view, the ratio of the said case would not be applicable to the facts of the present case. The search in the present case has been conducted by the Special Officer who has been appointed under the Act and the rest of the investigation has been carried out

by Assistant Police Inspector P.W.8, Serafino Dias and the ratio of the Judgment does not apply to the present case. The submission made on behalf of the Applicant, therefore, in respect of irregularity in investigating the case, therefore, cannot be accepted. It also cannot be said that the unauthorised Officer had carried out the investigation. In my view, therefore, no prejudice is caused to the Accused as the investigtion has been carried out as per the provisions of Section 13 of the said Act.

14. So far as the next submission of the learned Counsel appearing on behalf of the Applicant is concerned that the search was conducted by the Investigating Officer without following the provisions of Section 15 of the said Act also cannot be accepted. The Apex Court in the case of **Bai Radha** v. **State of Gujarat** (AIR 1970 SC 1396) has held that the provisions of Section 15 are not mandatory. Section 15 prescribes that the search of any premises can be carried out without any warrant. Section 15 Sub-Clause (2) enjoins upon the Investigating Officer to carry out the search in the presence of two or more respectable candidates of the locality. The proviso to Section 15, Sub-Clause (2) however, lays down that the requirement shall not apply to a woman required to attend and witness the search. The Apex Court in the case of **Bai Radha** v. **State of Gujarat**(supra) has held that the said provision is not mandatory and non compliance of Sub-Sections (1) and (2) of Section 15 is a mere irregularity and it does not vitiate the trial unless it shows that prejudice is caused by non compliance of the provision. In the present case, no evidence has been adduced by the Accused to show that prejudice is caused. The said submission, therefore, made by the learned Counsel appearing on behalf of the

Applicant cannot be accepted. So far as the next submission made by the learned Counsel appearing on behalf of the Applicant regarding the investigation to be made by the Complainant is concerned, in my view, no prejudice is caused to the Accused as a result of the said investigation. The Apex Court in the case of **State** v. **V. Jayapaul**(supra) has held that there is no provision in the Code of Criminal Procedure which precludes the Complainant from taking up the investigation and that merely because a police officer prepared the FIR on the basis of the information received by him and registered the offence that by itself does not disqualify him from taking up the investigation of the cognisable offence. The Supreme Court in para 4 has observed as under:-

> "4. We have no hesitation in holding that the approach of the High Court is erroneous and its conclusion legally unsustainable. There is nothing in the provisions of the Criminal Procedure Code which precluded the appellant (Inspector of Police, Vigilance) from taking up the investigation. The fact that the said police officer prepared the FIR on the basis of the information received by him and registered the suspected crime does not, in our view, disqualify him from taking up the investigation of the cognisable offence impelled by the information received from some sources is not outside the purview of the provisions contained in Sections 154 to 157 of the Code or any other provisions of the Code. The scheme of Sections 154, 156 and 157 was clarified thus by Subha Rao, J. speaking for the Court in State of U.P. v. Bhagwant Kishore Joshi(AIR p. 223, para 8)".

15. In the present case, therefore, in my view, merely because the Complainant happens to be a Police Officer who has carried out the investigation that itself could not cast any shadow of doubt or it cannot be said that the investigation was biased or it was not fair and impartial.

16. The learned Counsel appearing on behalf of the Applicant has further contended and urged that the Accused having been acquitted of the offences punishable under Sections 5 and 6 of the said Act could not have been convicted for the offence committed under Section 4. This contention also in my view cannot be accepted. From the perusal of Sections 4, 5 and 6, it can be seen that the 3 Sections contemplate 3 different situations and offences. Section 4 deals with a case where a person lives on the earnings of the prostitution of another person. Section 5 makes the procuring, inducing or taking a person for the sake of prostitution an offence and Section 6 makes a person liable if he detains a person in premises where prostitution is carried out. Thus, the 3 offences are separate and distinct and it cannot be said that they are interrelated offences. Thus, merely because the Accused has been acquitted for the offence committed under Sections 5 and 6 of the said Act that would not automatically absolve him from the liability.

17. I have perused the evidence adduced by the prosecution. P.W.5, Ulgawwa Chalwadi is the prosecutrix who has in terms stated that the Accused used to get the money from the customers which was sent to her. P.W.5, Chalwadi, the prosecutrix has withstood the prosecution and though there are

minor contradictions and improvements so far as her testimony in respect of payment of money to the Accused is concerned has remained unshaken. Her evidence has been corroborated by P.W.3, Minaxi Talwar who has stated in her evidence that she was a tenant in the building in which the Accused was staying and that she had seen the Accused accepting the money from the customers which were sent to the prosecutrix. She has further stated that the said customers paid money directly to the Accused. Since both the Courts have properly appreciated the evidence on record and have given concurrent findings on this issue, I see no reason to interfere with the findings recorded by the lower Courts. In the result, there is no reason to interfere with the Orders passed by both the lower Courts. The Judgment and Order passed by the learned Magistrate which is confirmed by the Assistant Sessions Judge and the Sessions Judge, therefore, is confirmed. The Criminal Revision Application under these circumstances is dismissed. At this stage, the learned Counsel appearing on behalf of the Applicant seeks stay of the Order of the trial Court for a period of four weeks. The Judgment and Order of the lower Courts is stayed for a period of four weeks so as to enable the applicant to approach the higher Court, if so advised.

Certified Copy expedited.

V. M. KANADE, J.

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